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BY P. GREGORY DEPUTY **DOUGLAS COUNTY
DISTRICT COURT CLERK**

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

DSM PARTNERS, LTD., a Colorado
Limited partnership

Plaintiff,

v.

METALAST INTERNATIONAL, LLC, a;
Nevada limited-liability company;
METALAST INTERNATIONAL, INC., a
Nevada corporation,
and DOES 1-10, inclusive,
Defendants.

Case No.: 13-cv-0114

Dept. No.: 2

RECEIVER'S FIRST STATUS REPORT

Pursuant to this Court's Order Granting Motion For Appointment of Receiver and Preliminary Injunction, the Receiver, James S. Proctor, hereby submits his first status report.

I, as Receiver, have operated the Receivership following appointment by the Court entered on April 25, 2013, upon the petition of DSM Partners, Ltd. ("DSM"), the lender to Metalast International, LLC ("Metalast, Company, or LLC"). DSM is the secured creditor of \$8,774,520.72 in principal and \$253,711.85 in accrued interest through March 1, 2013. At 18% compounded annualized interest. This only represents only about \$3.5M of principal versus the Semas \$10M of debt.

1 As Receiver, I conducted a staff meeting with employees and management of the
2 Company on April 26, 2013 to communicate the Receivership, its procedures, and how
3 operations would continue and to explain its process and responsibilities, and the
4 limitations placed upon the Company because of the Receivership. I explained to the
5 employees the general financial condition of the Company. I also solicited observations
6 and suggestions from the employees and the management. Management, without Mr.
7 David Semas ("Semas") consisted of Mr. Jeff Mackinen, Senior Vice President of
8 Administration, Mr. Greg Semas, Senior Vice President of Operations, and Ms. Wendi
9 Fauria, Vice President of Accounting and Investor Relations ("management"). The
10 Company conducts its operations out of an approximate 12,000 square foot commercial
11 industrial facility in Minden, Nevada. Mr. Proctor made certain to tell employees the
12 Company had been mismanaged and self-dealing occurred.

13 At the time the Receivership commenced the Company had failed to pay the
14 employees two payrolls approximating \$110,000 and the employee's health insurance
15 Other than Semas who hadn't taken a paycheck in four years only one pay period missed.
16 was in danger of being cancelled. In fact, the health insurance would have been
17 cancelled had the Receiver, from his own funds, not advanced approximately \$13,000
18 for payment. Once the initial loan advance from DSM was received 24 hours later the
19 Big Deal. Wendi Semas put 2-months of employee health insurance on her credit card.
20 Receiver was able to reimburse himself for the advanced funds. DCM, to date, has
21 advanced the Receivership \$250,000 in order to pay employee payroll and pay the
22 suppliers to bring their bills current. Because the Company uses a payroll service for its
23 payroll, it is current in its federal payroll tax obligations. According to the Company's
24 financial records the accounts payable liability to its trade vendors, suppliers, and some

25 employees totaled \$973,362.96. However, this amount is understated as will be outlined
26 Semas was owed \$10M and Meiling \$9M, \$973K is a minor amount.
27 below. Without the initial loan advance from DSM the business would have been forced
28 to close; payroll could not have been paid, the health insurance would have been
A few years earlier Semas negotiated a conversion of \$22M in debt to straight equity,

1 cancelled and some critical suppliers could not have been paid. It was also discovered
2 several days later that another lender to the Company had previously obtained a
3 \$500,000 default judgment for its unpaid debt under a promissory note. Chapter 11?

4 With sufficient rules, reporting, and oversight in place I have initially relied upon
5 management's assistance without the need for constant and continual on-site
6 supervision, and in order to minimize the costs of the Receivership. It is normal
7 procedure to minimize the disruption of normal operations, to the extent it can be, to
8 continue business without disruption to customers and to the employees while
9 determining if management and employees should be kept in place. Sometimes
10 management, with proper oversight, accountability, and procedures can be kept in place;
11 sometimes it is necessary to replace management. I have generally found
12 employees/staff qualified, diligent, and willing to cooperate and work as necessary to
13 keep the Company operating. Yes, as he proceeded to fire the entire senior staff most
14 knowlegable with the business and industry.

15 Upon commencement of such an engagement as this, there needs to be much
16 more direct and constant involvement by the Receiver as operations and finances are
17 evaluated, decisions need to be made, dealing directly with employees, vendors,
18 suppliers, and governmental authorities, interviewing parties of interest and those
19 affected by the Receivership, establishing procedures and oversight, determining the
20 reliability and competency of staff, employees and management. I am in the process of
21 reducing the direct time required, in order to reduce the costs of the Receivership. The
22 total hours that the Receiver has expended in this case is approximately 176 hours.
23 Because of the scope of work that is necessary and the concerns of costs of such I have
24 requested assistance from the Meiling's of DCM in researching records, contracts, sales
25 Key: ASSISTANCE OF MR. MEILING. As though he knows anything about the business.
26 opportunities and discussing with staff their responsibilities and recommendations.
27
28

1 However, as outlined below additional procedures and analysis needs to be performed
2 by the Receiver.

3 It became evident through the operation of only 1 week that monthly customer
4 revenue is not adequate to maintain operations as was structured and staffed. The
5 Receiver has worked with the management, employees, and DSM in order to develop
6 budgets and further ascertain the financial condition of the Company. Given the reduced
7 revenue, and hence reduced and inadequate cash flow for operations, it was determined
8 by the Receivership that a number of expenses had to be reduced, and that some staff
9 and management would need to be laid off. Three (3) employees have had to be laid off
10 and two (2) in senior management; Mr. Jeff Mackinen and Ms. Wendi Fauria were laid
11 off. Mr. Greg Semas chose to resign his position. The duties are being or have been
12 reassigned. For good reason, after Madylon Meiling called his sister a thief.
13

14 The Receiver has spent a significant amount of time dealing with creditors
15 as some have not been paid for many months. Yes, and over \$22 million debt had already
16 been eliminated.
17

18 During review of the operations and the analysis of the financial condition of the
19 Company, the following was noted:

- 20 • Among the creditors that have not been regularly paid are the two landlords.

21 While there have been some partial payments of rent, unpaid rents date back to
22 March 2011. One landlord is owed approximately \$180,500. The other landlord
23 is owed approximately \$375,300. The Company's accounting records, financial
24 statements and tax returns understate this landlord's liability at \$144,472. The
25 rent to the two landlords is over \$12,000 per month, not including CAM charges,
26 and property taxes. There is a large amount of unused space.

27 The landlords negotiated with Jeff Mackinen to accept less than \$300,000.
28

- 1 • Other creditors that have not been regularly paid and have outstanding balances
2 are:
- 3 ○ The Company's CPA firm (approximately \$160,000) with outstanding
4 balances back to 2010. Thus, the CPA firm is not independent to the
5 Company. CPA was working with Management and would accept \$100K
6
- 7 ○ Attorneys that represented the Company in its SEC investigation
8 Yes, the baseless SEC witch hunt launched by former MILLC employees and others?
(approximately \$124,000) with outstanding balances back to 2010.
9 Law Firm had been paid over \$500K and agreed to settle balance for \$50K
 ○ Intellectual Property Attorney (approximately \$7,000).
10 ○ Landlord settlement on abandoned space (\$20,000).
11 ○ Outside consultants, some of which are former employees (approximately
12 \$63,000).
13 ○ Employee reimbursements.
14 ○ A number of small trade creditor and vendors have not been paid for more
15 than 90 days.
16
- 17 • Some suppliers had not been paid for over 30 days. Those suppliers are now
18 current. In the big picture, these amounts are minor and all could have
19 been settled in a Chapter 11 for \$0.25 cents on the dollar.
20
- 21 • In addition to their salaries and expense reimbursement, management was being
22 paid \$37,200 in annual car allowance. There were also instances that in addition
23 to the paid car allowance some management was continuing to charge local gas
24 charges as well. The car allowance has been discontinued by the Receiver.
25
- 26 • Based upon the Company prepared financial statements and an analysis of the
27 Company's tax returns:
28 Out of \$100 million of investment, 20-years of R&D, testing, specifications,
marketing, branding and payroll for staff up to 38 -people - - Car allowances?

1 ○ The amount of monies that the approximate 1,000 members of the LLC
2 have either contributed (or whose debt has been turned into equity) total
3 more than \$95 million. **More like \$9 million.**
4
5 ○ The accumulated deficit (losses) for the LLC totals more than \$119 million.
6 **MILLC Member losses were passed through and written off each year.**
7 ○ Within the past ten years, there were many years when salary expense
8 exceeded the gross profit of the Company. Thus, there was a loss in the
9 **This is very typical for an R&D company in which testing/specs can take up to ten years.**
10 Company even before operating expenses.

- 11 • The Company paid health insurance for all employees, spouses and family.
- 12 • Despite that creditors, including landlords, were not being paid (some for more
13 than 2 years), management continued to receive full salaries, car allowances and
14 fringe benefits. **A lie. Semas took a reduced salary for many years, and no salary
15 for four years, plus lent millions to the business.**
- 16 • There appear to be a large number of personal expenses charged to the
17 Company's credit card. There appear to be other transactions of self-dealing as
18 well, including the Employment Agreement with Mr. David Semas at a time that
19 the Company could not afford such an agreement. These need to be investigated
20 further. **Another lie. Credit card expenses were 100% legitimate and receipts
21 provided. Mr. Semas' latest 2010 Employment Agreement was never paid.**

- 22 ○ A further example of the attitude of prior management can be illustrated by
23 Mr. Greg Semas' refusal to surrender back to the Company the laptop
24 computer and iPhone that are Company assets and were charged on the
25 Company's credit card. He asserts that this was gifted to him by Mr. David
26 Semas. Employees don't and cannot receive gifts from companies,
27 employees are remunerated through compensation. There is no evidence
28 that any purported transfer of a Company asset has been included in his
 **income. Another scam. Many employees were given their computers, a
 value of \$500. This was about preventing a Semas from retaining
 MII records.**

1 o In addition both Greg Semas and Jeff Mackinen had been advanced
2 \$10,000 each, more than three years ago, and those funds have never
3 been reimbursed to the Company, nor has there been any interest accrued
4 on those advanced amounts. Both received a modest bonus in lieu of
5 foregoing pay increases for many years

- 6 • A number of transactions and documents refer to the LLC (Metalast International,
7 LLC) or Metalast International, Inc. interchangeably with very little consideration
8 for the nuances of the differences. For example the Company's invoices are titled
9 as Metalast International, Inc. ("MII") when they are clearly meant to be the
10 Company's invoices – the LLC. There does not appear to be a proper
11 differentiation between the entities and the names are used interchangeably.
12 Not true. Separate bank accounts. Funds were never comingled
13 Even after the commencement of the Receivership a new patent that the
14 Company (LLC) obtained, using Company employees was being listed as MII.
15 Minor patent, which Semas voluntarily conveyed back to MILLC.
16 • Within the past year there were some months of large revenue/sales deposits, the
17 Receiver is still researching and analyzing the subsequent disbursements.
18 • In March 2013, more than a month prior to the Receivership, DSM loaned the
19 Company \$200,000. Fails to mention Meiling conned Semas into personally guaranteeing the loan.
20 Subsequently, and prior to the Receivership, there were
21 disbursements to Wendi Fauria totaling more than \$26,000 and an unexplained
22 check to Greg Semas for \$8567.96. All documented. Paid Wendi for reimbursement of employee health insurance.
23 These are being further researched.

24 In some Receivership's, it is customary to further analyze transactions and
25 review the financial condition and history of the subject entity. It is the Receiver's
26 opinion that additional analysis and research needs to be performed and he is continuing
27 such. In addition to what is continuing to be analyzed, items that could be, and may be
28 performed, include:

- Analysis of past financial reports and financial condition, including revenue, expenses, ownership loans and capital, bank transactions, payroll.
- Investigation into certain relationships and transactions with vendors and suppliers.
- Analysis of transactions in determining whether preferences and possible fraudulent conveyances exist or occurred.
- Further interview with other Company members.

Despite the financial condition of the Company and its past financial transactions there are positive aspects of the Company. Included are some new customers and Who produced the positive aspects and put every contract, license and product in place? distributors, and an additional QPL certification. Many LLC members and the employees continue to think that the Company will be able to capitalize on the past efforts and research of the Company. Recognizing that expenses can only be cut to such an extent, it is incumbent upon the Company to increase revenues. Strategies are being Evidence will establish the Company was very near a break-even at time of sham asset sale. developed for such, with the assistance of employees.

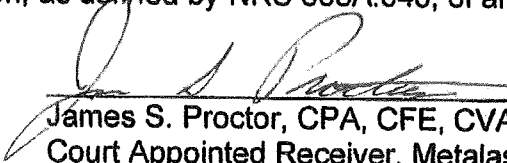
Because of the short time period to date and the continued involvement of the Receiver, and to limit the fees and costs, this Report is abridged and abbreviated, but the Receiver is available to the Court for any additional questions or comments and this report may be supplemented. Further, as additional analyses are performed, the Receiver will file additional Status Reports. Because additional research and procedures are continuing to be performed, the Receiver reserves the right to supplement this Report.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not contain the Personal Information, as defined by NRS 603A.040, of any person.

Dated: June 12, 2013.


James S. Proctor, CPA, CFE, CVA, CFF
Court Appointed Receiver, Metalast
International, LLC

1 **CERTIFICATE OF SERVICE**

2 I, Zabett Buzzzone, declare that:

3 I am over 18 years of age and not a party to, or interested in, the within entitled action. I am an
4 employee of Armstrong Teasdale, LLP located at 50 West Liberty Street, Suite 950, Reno, Nevada, 89501.
5

6 On June 13, 2013, I served the following document:

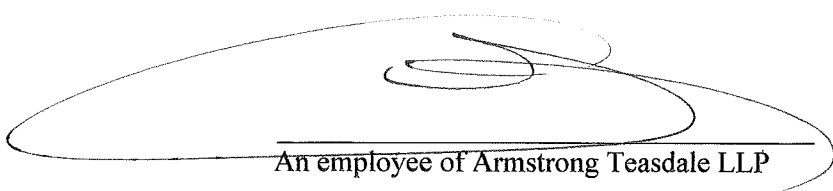
7 **RECEIVER'S FIRST STATUS REPORT**

8 [X] BY MAIL [N.R.C.P. 5(b)] I caused each envelope to be placed for deposit with the U.S. Postal Service in
9 a sealed envelope, with postage prepaid, and that each envelope was placed for collection and mailing on that
10 date following ordinary business. I am readily familiar with the business practice at my place of business for
11 collection and processing of correspondence for mailing with the U.S. Postal Service. Correspondence so
12 collected and processed is deposited with the U.S. Postal Service that same day in the ordinary course of
13 business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date
14 or postage meter date is more than one day after date of deposit for mailing in affidavit;

15 James S. Proctor, Receiver
16 Meridian Advantage
200 Ridge Street, Suite 240
Reno, Nevada 89501

Michael D. Rounds, Esq.
Watson Rounds
5371 Kietzke Lane
Reno, Nevada 89511

17
18 I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.
19

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21 
22 An employee of Armstrong Teasdale LLP
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